

Black's Railroad Transit Service and Candice L. Bowles and Richard Carroll. Cases 33–CA–13425 and 33–CA–13481

June 20, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS
LIEBMAN AND TRUESDALE

On a charge and a first amended charge filed by Candice L. Bowles in Case 33–CA–13425 on September 5 and November 17, 2000, and a charge and a first amended charge filed by Richard Carroll in Case 33–CA–13481 on October 27 and December 19, 2000, the General Counsel of the National Labor Relations Board issued a complaint in Case 33–CA–13425 on November 30, 2000, against Black's Railroad Transit Service (the Respondent), and the Acting General Counsel issued a complaint in Case 33–CA–13481 against the Respondent on January 19, 2001. The complaints allege that the Respondent has violated Section 8(a)(1) and (3) of the National Labor Relations Act (the Act). Although properly served copies of the charges and complaints, the Respondent failed to file an answer to either complaint. On April 3, 2001, the Acting Regional Director for Region 33 issued an order consolidating Cases 33–CA–13425 and 33–CA–13481.

On April 6, 2001, the Acting General Counsel filed a Motion for Summary Judgment with the Board. On April 9, 2001, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Notice to Show Cause stated that the Respondent's response should be filed with the Board, with affidavit of service on the parties, by April 23, 2001. No such response was received by the Board. However, on April 30, 2001, the Office of the General Counsel's Division of Operations-Management in Washington, D.C., received an undated letter from the Respondent stating: "Attention: The NLRB in Peoria should have sent their files on to you, but here is everything we have sent to them." Attached to the letter were memoranda setting forth answers to various questions relevant to the allegations in the charges filed by the two individual Charging Parties. Also attached were certain employment records. The Division of Operations-Management forwarded the letter and attached documents to the Board.

We decline to accept these documents in lieu of an answer to the complaint on both procedural and substantive grounds. Procedurally, we find that they were neither timely filed nor properly served on counsel for the General Counsel and the Charging Parties. Nowhere in the documents does the Respondent explain its failure to previously file an answer to the complaint or to timely respond to the Notice to Show Cause.

Substantively, we find that, even assuming we were to accept the documents as timely filed and served, they do not constitute a sufficient answer to the complaint allegations.¹ The memoranda and other documents attached to the Respondent's letter appear to be a copy of statements of position submitted during the precomplaint investigation of the charges. There is nothing in those documents indicating that they were filed in response to the subsequent complaint, or that they are intended to serve as an answer to the complaint. Nor does the Respondent's belated letter forwarding those documents to the Division of Operations-Management indicate that they are intended to serve as the Respondent's answer to the complaint. In these circumstances, and notwithstanding the Board's general policy of showing some leniency to pro se litigants, we decline to accept the letter and attached documents in lieu of a formal answer. Cf. *Mid-Wilshire Health Care Center*, 331 NLRB 1032 (2000); *Electro-Flyte, Inc.*, 331 NLRB 633 (2000); and *Central States Xpress*, 324 NLRB 442, 443–444 (1997) (Board accepted pro se respondents' postcharge, precomplaint statements of position in lieu of a formal answer where the respondents had filed an informal response to the complaint which expressly incorporated the prior statement of position).

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, each of these complaints affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated March 19, 2001, notified the Respondent that unless an answer were received by March 26, 2001, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, an Illinois corporation with an office and place of business in Galesburg, Illinois, has been engaged in business as a transportation service. During the 12-month periods ending December

¹ Chairman Hurtgen does not agree with this finding.

31, 1999, and December 31, 2000, the Respondent, in conducting its business operations described above, performed services in excess of \$50,000 in States other than the State of Illinois, and purchased and received at its Galesburg, Illinois facility, goods valued in excess of \$50,000 directly from points outside the State of Illinois. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that Teamsters, Chauffeurs & Helpers, Local Union No. 627, International Brotherhood of Teamsters (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Richard Black held the position of the Respondent's owner and president, and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

At all material times, Glenda Black was the sister of Richard Black, and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and/or an agent of the Respondent within the meaning of Section 2(13) of the Act.

On about August 27, 2000, the Respondent suspended its employee, Candice L. Bowles. On about September 4, 2000, the Respondent reassigned Candice L. Bowles from taxi 3 (the tower) to taxi 5 (the trimmer).

On about October 23, 2000, the Respondent terminated its employee, Richard Carroll.

The Respondent suspended and reassigned employee Bowles and terminated employee Carroll because they joined the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has discriminated in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, and has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by suspending and reassigning Candice L. Bowles, we shall order the Respondent to offer Bowles reassignment to her former position on taxi 3. We also shall order the Respondent to make Bowles whole for any loss of earn-

ings and other benefits suffered as a result of the discrimination against her. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enf'd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, having found that the Respondent has violated Section 8(a)(3) and (1) by terminating Richard Carroll, we shall order the Respondent to offer him full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed. Further, we shall order the Respondent to make Carroll whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, supra.

The Respondent also shall be required to remove from its files any references to the unlawful suspension and reassignment of Bowles and to Carroll's unlawful termination, and to notify Bowles and Carroll in writing that this has been done and that those actions will not be used against them in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Black's Railroad Transit Service, Galesburg, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging, suspending, reassigning, or otherwise discriminating against employees because they join a union or engage in concerted activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Richard Carroll full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed.

(b) Make employee Carroll whole for any loss of earnings and other benefits suffered as a result of his unlawful discharge, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, offer Candice L. Bowles reassignment to her former position on taxi 3.

(d) Make employee Bowles whole for any loss of earnings and other benefits suffered as a result of her unlawful suspension and the Respondent's reassignment of her from

taxi 3 to taxi 5, in the manner set forth in the remedy section of this decision.

(e) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge of employee Carroll and the unlawful suspension and reassignment of employee Bowles, and within 3 days thereafter, notify them in writing that this has been done and that these discriminatory actions taken against them will not be used against them in any way.

(f) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its facility in Galesburg, Illinois, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 33, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 27, 2000.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsi-

ble official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT discharge, suspend, reassign, or otherwise discriminate against you because you join a union or engage in concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, offer Richard Carroll full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed.

WE WILL make Richard Carroll whole for any loss of earnings and other benefits suffered as a result of his unlawful discharge, with interest.

WE WILL, within 14 days from the date of this Order, offer Candice L. Bowles reassignment to her former position on taxi 3.

WE WILL make Candice L. Bowles whole for any loss of earnings and other benefits suffered as a result of her unlawful suspension and our reassignment of her from taxi 3 to taxi 5, with interest.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful discharge of employee Carroll and the unlawful suspension and reassignment of employee Bowles, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that these discriminatory actions taken against them will not be used against them in any way.

BLACK'S RAILROAD TRANSIT SERVICE

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."